HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 21902 of 2006

DATED: 18.1.2007

Between:

R. Smitah Raju

… Petitioner

and

State Bank of India, Commercial Branch

… Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 21902 OF 2006

ORAL ORDER:

The petitioner assails the recovery proceedings initiated under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the Act').

It would appear that M/s Arrow Paper Mills Limited (for short 'the Paper Mills') obtained a loan from the respondent-Bank and defaulted. The petitioner and her father Dr. R.P. Raju stood guarantors to the loan availed by the Paper Mills. Towards the said purpose, the petitioner created an equitable mortgage on her immovable properties on 1.3.1997, towards collateral security for the loan extended by the respondent-Bank to the Paper Mills.

As there was a default, the respondent-Bank filed O.A.No.527 of 2000 before the Debts Recovery Tribunal, Hyderabad (for short 'the Tribunal') against the Paper Mills and the guarantors including the petitioner, seeking recovery of an amount of Rs.1,29,69,510.16 ps together with future interest and costs. O.A.No.527 of 2000 was allowed on 29.9.2003. As the certified debt was not satisfied by the

respondents to the O.A., including the petitioner, demand notices were issued for recovery of an amount of Rs.2,22,65,129.16 ps, including the interest component up to 9.10.2003.

As is apparent from the counter affidavit of the respondent-Bank, the Managing Director of the Paper Mills and the father of the petitioner Dr. R.P. Raju (respondents 2 and 3 in the O.A.) sought benefits of a 'one time settlement. The 2nd respondent in the OA, towards fulfillment of the terms of the one time settlement agreed by the bank, sent a cheque for Rs.1 crore on 27.4.2005. The cheque was dishonoured. The Bank thereupon initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against Dr. R.P. Raju and the Paper Mills. In the circumstances, the respondent-bank is proceeding to bring the properties to sale for recovery of the amounts due to it.

The petitioner filed applications before the Tribunal for setting aside the ex parte order and also for stay of the recovery proceedings, pursuant to the order in O.A.No.527 of 2000. Complaining that these applications have not been disposed of and while the properties are brought to sale and asserting that the petitioner had migrated to the United States and had thus no notice of the proceedings in O.A.No.527 of 2000, the writ petition is filed, in substance, seeking interdiction of the sale of the mortgaged properties.

Admittedly, the petitioner has stood guarantee to the loan obtained by the Paper Mills. The assertion by the respondent-Bank

that the cheque for Rs. 1 crore issued by the Managing Director of the Paper Mills-the principal borrower, was dishonoured, is not contested.

In the circumstances, the so called one time settlement between the principal borrower and the respondent-bank ceases to be operative and the bank is at liberty to recover the entire amount due from the principal borrower and the guarantors, under the terms of the loan and the guarantees and in accordance with the order in O.A.No.527 of 2000. The petitioner's claim that she was not aware of the proceedings in O.A.No.527 of 2000 on account of the fact that she had migrated to the United States, is not a matter falling for consideration before this court as it requires to be determined by the Tribunal in the applications filed by the petitioner, seeking setting aside of the ex parte decree.

The other relief sought herein, by the petitioner that pending consideration of the petitioner's application (for setting aside the ex parte order in O.A.No.527 of 2000 by the Tribunal and consideration of her other application for stay of recoveries), this court should interdict the conduct of sale of the mortgaged properties, does not commend acceptance by this court. In the factual matrix adverted to above, no legal or equitable reasons exist for grant of relief in favour of the petitioner.

The writ petition is dismissed at the stage of admission, after hearing Sri M. Narender Reddy, learned Standing Counsel for the respondent-Bank. The observations recorded herein are in the context of the facts of this case and the Tribunal will dispose of the pending

applications of the petitioner, on their own merits. No costs.

GODA RAGHURAM, J

Date: 18.1.2007
CVM